

## LABOUR DEPARTMENT

The 3rd November, 1980

No. 11(112)-80-8 Lab/11759—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Municipal Committee, Bahadurgarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 292 of 1978

between

SHRIMATI PARKASH VATI, WORKMAN AND THE MANAGEMENT OF MUNICIPAL  
COMMITTEE, BAHADURGARH

Present— Shri Harish Chander, for the workman.  
Shri Kanwal Singh, for the management.

## AWARD

This reference No. 292 of 1978 has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RTK/46223, dated 12th October, 1978 under section 10(i)(c) of the I.D. Act, 1947 for adjudication of the dispute existing between Shrimati Parkash Vati, workman and the management of Municipal Committee, Bahadurgarh. The term of the reference was :—

“Whether the termination of services of Shrimati Parkash Vati was justified and in order ? If not, to what relief is he entitled ?”

On the receipt of order of reference usual notices were sent to the parties, parties put in their appearance in response to the same, filed their respective pleadings on the basis of which the issue “as per reference” was framed by my learned predecessor on 10th May, 1979. The management was asked to lead their evidence on 19th June, 1979. The management evidence was recorded on this date of hearing Shri Siri Kishan, Secretary of the Municipal Committee was examined as the witness for the management. Evidence of the workman was recorded on 15th November, 1979. The workman herself appeared as her own witness. The parties filed written arguments on 14th March, 1980.

I have gone through the written arguments filed by the parties and also carefully perused the evidence oral as well as documentary which is on the record and decide the issue No. 1 as under :—

*Issue No. 1.*—The management has relied upon documents Exhibit M-1 to M-6. Ex. M-1 is the order of appointment of the workman, Ex. M-2 is the joining report of the workman, Ex. M-3 is the Administrator order dated 23rd October, 1972, Ex. M-4 is also the order of granting extension for a further period of six months Ex. M-5 is also the notings of order of the Administrator for further extension of the term of service of the worker contained in the list including the workman concerned and Ex. M-6 is the noting in respect of the work and conduct of the workman and the action taken against her including the order of termination. The MW-1 Shri Siri Kishan Secretary stated that the services of the workman were terminated after giving her an opportunity of personal hearing when she did not comply with the transfer order as directed by the Administrator. In his cross examination he has given out that the job against which the workman was working of permanent nature. No intimation was given to the workman in respect of extension of her services from 11th November, 1973 on wards. No chargesheet was given or enquiry held against the workman on charges of non compliance of order and for in subordination. According to the order after personal hearing the work and conduct of the workman was to be watched for 15 days but on receipt of the report of the Chief Sanitary Inspector on the very next day i.e. 11th September, 1974 her services were terminated on 12th September, 1974. The Secretary on receipt of that report proposed the suspension of the sweepress and for charge sheeting her for non compliance of the order of her suspension. He has further given out that for Safai Mazdoor one year probationary period was provided under the rules and if the workman was found satisfactory during that period he or she could be confirmed. Upto 4th July, 1974 when the first complaint was received against the workman her work and conduct for the earlier period was quite satisfactory.

The workman has relied upon two documents one is the letter of appreciation given in favour of the workman by the residents of the locality namely Subzi Mandi where she worked till the time of her termination which is Ex. WW1/A and the other is Ex. WW1/B which is addressed to the worker regarding the taking away of wheel Barrow by her from Sabzi Mandi Area. In her statement the applicant has stated that she was appointed in the year 1972 as sweepress—*vide* Ex. M-1, and her period of services was extended for further terms of six months from time to time but she did not receive any information about the extension of her term of services from 11th May 1973 onward and she continued working till her services were terminated on 12th September, 1974. She has stated that she refused to work at the house of the Sanitary Inspector and annoyed the Chief Sanitary Inspector griev

revengeful and begin to transfer her to some dirtiest place of the town. She was not told on 10th September, 1974 as to which place she was transferred and after levelling a false allegations her services were terminated. The management could not draw out from the workman in cross examination anything with regard to their allegations that she did not go to new place of her transfer as the management could not confront her with any order of transfer issued by the management to the workman. The workman consistently stated that she performed her duties at her old place of posting.

The management has based their stand on the fact that the workman was transferred from Sabzi Mandi area to Nai Basti Area and the workman did not comply with this order and for that very reason her services were terminated in accordance with the terms of employment. The management has further contended that the power of the management to terminate the services of the employee in terms of the contract of service cannot be questioned on the ground that the order of termination was not preceded by enquiry. The learned authorised representative of the management has referred to a judgement of the Madras High Court reported in 1979 II L.L.J. at page 274 in their judgement the learned judges of the Madras High Court have referred to a series of Supreme Court cases such as 1978 L.L.C. page 303 where in the Supreme Court has held that under clause 3 of the Special Contract of service entered into between the employee and Canara Bank after giving three month's salary in lieu of notice for unsatisfactory work, is not a termination of service for misconduct and therefore the order is not vitiated for violation of principles of natural justice in that no enquiry was conducted before the actual termination of services. In that case it has been pointed out that where an order terminating the services of employee has been passed in exercise of the contractual right by the employer, the motive which led to the exercise of such a power has to be carefully distinguished from the nature of the order.

From Ex. M-6 the noting of the Secretary Shri Ranbir Singh it is clear that the workman was the daughter of ex-municipal commissioner and she was not performing her duties on this account. Her father once or twice entered the office of the Sanitary Inspector and blew hot and cold with the Sanitary Inspector and the Safai Daroga and he went to the extent of insisting the sweepers to go on strike. From this noting it can be understood that the management has been prejudiced with the workman and became vindictive and the further notings alongwith this go to arise doubts as to it being a manipulation in order to get rid of the workman.

As has been pointed out in the Supreme Court judgement referred to above by the management "the motive which led to the exercise of such a power has to be carefully distinguished from the nature of the order" which reads as under :—

"She has been repeatedly negligent in her duties. She is a temporary employee and she was given appointment with the condition that any lapse on her duty will amount to terminate of her services without notice. As per report of the Sanitary Inspector and Secretary, Municipal Committee, she has not improved. Her services are, therefore, terminated with immediate effect."

From the comparison of the order of termination with the noting sheet Ex. M-6 the inference can well be drawn that the notings are made in accordance with the order of termination keeping in view the order of appointment. From the statement of MW-1 it is pointed out that the services of the workman were terminated on her declining to comply with the order of her transfer but in the order of termination the services were terminated on account of her being negligent in duties. Whatever be the case in both the cases there was an act of misconduct on the part of the workman to be negligent or to disobey the orders of the superiors. From the case cited above it is pointed out that when there is termination on the ground of misconduct the order of termination must precede the enquiry but in this case as is given out by the witness MW-1 no enquiry was ever held in respect of the charges of negligence or non compliance of the order. The workman was appointed against a permanent post and from the statements of the management witness it is confirmed that the workman who remains on probation for one year becomes regular after the expiry of one year. The workman representative has cited A.I.R. 1973 S.C. page 2634 in support of his contention that even in case of a probationer the Industrial Tribunal can go into the question of the validity of the order of termination. The ratio of the judgement cited above runs as under :—

"Even in the case of a probationer whose services have been terminated before the expiry of the probationary period without assigning any reason, in accordance with the terms of contract, an Industrial Tribunal came into the question of the validity of the order of termination what has to be seen is whether the action of the employer is mala fide or whether it amounts to victimisation of the employee or is an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and is not in bonafide exercise of the power arising out of the contract."

In the light of the judgement refer to above and on the fact of the evidence on the record of the file the action of the Management is based on ulterior motive having mala fide intention and cannot be claimed by any stretch of imagination to have been prompted and as taken in bona fide exercise of power arising out of the contract

of service. The order of termination is therefore neither justified nor in order. The workman is entitled to re-instatement with continuity of service and with full back wages for the period she has remained out of service. I answer the reference while returning the same in these terms. No order as to costs.

Dated the 17th October, 1980.

BANWARI LAL DALAL,

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 2591, dated 21st October, 1980.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Department as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,  
Labour Court, Haryana, Rohtak.

H.L. GUGNANI, Secy.